LIBRARY
SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
MAY 8 1975
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

74-1402

CHARLES L. HAM, Petitioner,

vs.

THE CITY OF TULSA
A Municipal Corporation,
Respondent.

Appeal from the Tenth Circuit Court of Appeals, Case Number 74-1631

PETITION FOR WRIT OF CERTIORARI

Robert Lee Blackwood
Attorney for Petitioner
1311 South Guthrie
Tulsa, Oklahoma, 74119

Service To: Mr. Phillip Haney
Asst. City Attorney
City Hall
Tulsa, Oklahoma 74103

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES L. HAM,
Petitioner,

vs.

THE CITY OF TULSA,
A Municipal Corporation,
Respondent.

PETITION FOR WRIT OF CERTIORARI

COMES NOW, the Petitioner and for Petition of Certiorari, does herein submit,to-wit:

a. Petitioner does appeal from the decision of the United States Circuit Court of Appeals for the Tenth Circuit. The mandate of the Tenth Circuit Court of Appeals was entered on the 7th day of February, 1975, and is attached here as Appendix I.

b. The Petitioner invokes the jurisdiction of this Court to review the judgment of the Tenth Circuit Court of Appeals because this Petitioner has the constitutionally protected right under the Fourth, Fifth, Ninth, and Fourteenth Amendments to the United States Constitution to be free from unreasonable searches, seizures and to prohibit his personal property, books and papers from being taken from him by the City of Tulsa without due process of law, and, further, the Petitioner does have standing to sue for the protection of his civil rights and damages for the taking of his personal property, books and papers

without the payment of damages therefore by the City of Tulsa by virtue of 42 U.S. C.A., Sec. 1983 and 1988. And, that Petitioner has the further right to be compensated for the public taking and use of his personal property, books and papers without the payment of just compensation therefor in accordance with Article II, Section 24 of the Oklahoma Constitution which prohibits the taking of private property for public use without the payment of just compensation therefor, and that to deny Petitioner this right is to deny him of equal protection of the law prohibited by the Fourteenth Amendment, and does also deny the Petitioner the right to the security of his privacy and the invasion thereof by a municipality which is prohibited by the Fourth, Fifth, and Ninth Amendments to the United States Constitution.

c: Questions presented for review are the following:

May the poorest man in his cottage enjoy his privacy and bid defiance to all the forces of the municipal police power when they have taken his private books, papers and personal property, contrary to the provisions of the Fourth and Fourteenth Amendments to the United States Constitution?

And, if the Police Power of a municipality does cross the threshold of the ruined tenement contrary to the United States Constitution,does not the citizen have the right to sue for damages for the trespass of his privacy, as well as for the taking of his books, papers and property

and the protection of his civil rights, pursuant to the law and equitable powers contained in 42 U.S.C.A. 1983 and 1988 of the federal statutes, and contrary to the provision in the citizens constitution prohibiting the taking of private property without the payment of just compensation therefor ?

A concise statement of the facts of the appeal are as follows:

Petitioner's property was taken from his residence on the 30th day of May, 1973, pursuant to an illegal search warrant which did not comply with the law of the State of Oklahoma. The City of Tulsa obtained the illegal warrant and used it to enter the Petitioner's residence, whereupon certain items of Petitioner's personal papers and property, including childrens' books, of which he was the author, and personal records, were seized and taken by the Respondent municipality. Petitioner claimed that the wrongful actions of the Respondent were not only accomplished under color of State law, but that his property was taken from him without due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution, and that Petitioner should thereby be compensated under the State of Oklahoma Constitution which provides that private property cannot be taken for public use without just compensation being paid therefor; Article II, Section 24, Oklahoma Constitution. Respondent's Motion to Dismiss was sustained by the U.S. District Court for the Northern District of Oklahoma, due to the fact that 42 U.S.C.A., 1983 did not contemplate municipalities as being persons within the

meaning of federal law. Petitioner's suit was dismissed, although Petitioner countered with the fact that 42 U.S.C.A., 1988 provided the requisite equity jurisdiction for the federal issues of due process and the invasion of privacy and tnat the Court could thereby decide the compensation which Petitioner was entitled to by virtue of Article II, Section 24 of the Oklahoma Constitution as a question of pendent jurisdiction. Thereafter, Petitioner appealed to the United States Court of Appeals for the Tenth Circuit and the judgment of the United States District Court for the Northern District of Oklahoma was affirmed by virtue of this Court's holdings in Moor v. County of Alameda, 411 U.S. 693, (1973); Monroe v. Pape, 365 U.S. 167, (1961).

d. The jurisdiction of the Federal Court was sought by this Petitioner on the basis that his civil rights had been violated in accordance with 42 U.S.C.A., Section 1983 and Section 1988, and that his constitutional rights in accordance with the Fourth Fifth, Ninth and Fourteenth Amendments were violated. The Petitioner seeks review in this Court because the Petitioner was denied standing to sue under 42 U.S.C.A., Section 1983, and it was held that the equity jurisdiction provided in 42 U.S.C.A. did not allow him to sue the City of Tulsa for compensation for the taking of his books,papers and property. Further, this Court should entertain jurisdiction for a Writ of Certiorari in accordance with Rule 19b of this Court, due to the fact that the Tenth Circuit Court of Appeals has decided that equity jurisdiction of 42 U.S.C.A., Section 1988 does not allow actions by a citizen

against a municipality for damages when Justice Marshall in the majority opinion in Moor v. County of Alameda, 411 U.S. 693, (1973) expressly recognized that there is an area of equity jurisdiction which may be invoked by 42 U.S.C.A.,1988. And, the Petitioner's case now before this Court is exactly the type of case that Justice Douglas wrote about in his dissent in the Moor v. County of Alameda case.

e. The Court below held that Moor v. County of Alameda, et al. (1973); 411 U. S. 693, and Monroe v. Pape (1961), 365 U.S. 167 as being conclusive of this matter since in those cases it was held that a municipality was not a "person" within the meaning of the Civil Rights Act. At this point I would direct the attention of the Court to the dissenting opinion of Justice Douglas which begins at page 723 of the Moor v. County of Alameda case. In that dissent, Justice Douglas correctly points out that in the Monroe v. Pape decision, the issue was whether or not municipalities were liable in damages and Justice Douglas also aptly points out that the claims in Monroe v. Pape were being strongly pressed because "private remedies against officers for illegal searches and seizures are conspicuously ineffective,and because municipal liability will not only afford plaintiffs responsible defendants, but cause those defendants to eradicate abuses that exist at the police level." Further, Justice Douglas correctly points out that 42 U.S.C.A., Section 1983 permits equitable relief as well as damages and cites the case of Mitchum v. Foster, 407 U.S. 225 at page 242 for the following:

This legislation makes evident that

> Congress clearly conceived that it was altering the relationship between the States and the nation with respect to the protection of Federally created rights; it was concerned that State instrumentalities could not protect those rights; it realized that State officers might, in fact, be antipathic to the vindication of those rights; and it believed that these failings extended to the State Courts.

Therefore, this Court must carefully weigh the right of this Petitioner to have some type of equitable relief, if not in damages, pursuant to 42 U.S.C.A., Section 1983, 1988 or for the return of his property, then for compensation for property which was deprived from him by the lack of due process of law which is guaranteed to the appellant, not only by Article II, Section 24 of the Oklahoma Constitution, but also by virtue of the Fourteenth Amendment to the United States Constitution.

Since 1765 in the case of Entick v. Carrington and Three Other Kings' Messangers, 19 Howell's State Trials, 1029, a subject of the English Kingdom has had the right to sue for his damages in trespass for the seizure of his papers and books. Should a citizen of the United States be afforded less a right, even though the adoption of the Fourth Amendment to our Constitution was a colonial recognition of the wrongs inherent in writs of assistance which fostered unreasonable searches and seizures. Boyd v. United States, 116 U.S. 616, 630 (1886) views the matter correctly:

> It is not the breaking of his doors, and the rummaging of his drawers that

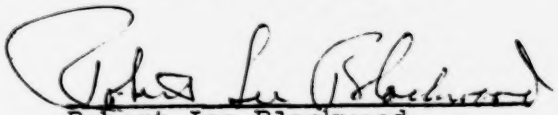
> constitutes the essence of the offense, but the invasion of his indefeasible right to personal security, personal liberty and private property...

And, in this case, Petitioner should be compensated for the taking of his private property and 42 U.S.C.A. gives the federal Courts the right to have this Petitioner compensated pursuant to Article II, Section 24 of the Oklahoma Constitution.

Equally important in this appeal is the fact that the appellant, as guaranteed by the penumbra of constitutional rights guaranteed by the First, Fourth, Fifth and Ninth Amendments to the United States Constitution, as well as by the protection and due process clause of the Fourteenth Amendment, is entitled to an enclave of privacy which is protected from governmental intrusion. Griswold v. State of Conn. 85 S.Ct. 1678, 381 U.S. 479, 14 L. Ed. 510; Katz v. U.S.,88 S.Ct. 507, 389 U.S. 347, 19 L.Ed. 576 (1967). Thus, it is quite important that when the Court is considering the questions which not only involve the invasion of the privacy of a citizen's domicle, but also encompase the taking of personal property and papers contrary to the Fourteenth Amendment, that the Court must protect the Federal civil rights of the citizen involved by extending the equitable protections of the equal protection and due process clause as being applicable against the exercise of State power, however manifested, whether exercised

directly or through municipal subdivisions of the State. See Avery v. Midland County Texas, 88 S.Ct. 1114, 309 U.S., 474, 20 L. Ed.2d. 45 , on remand, 430 SW2d. 482 (1968).

Respectfully submitted,



Robert Lee Blackwood
Attorney for Petitioner